

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)**

BOARD OF DIRECTORS OF THE LINKS  
CONDOMINIUM ASSOCIATION, INC.,

Plaintiff,

v.

INVESTORS USA III, LLC,

Defendant.

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Case No. 3:11-CV-00252

**PLAINTIFF'S MOTION FOR REMAND AND  
INCORPORATED MEMORANDUM OF LAW**

COMES NOW, the Plaintiffs, BOARD OF DIRECTORS OF THE LINKS CONDOMINIUM ASSOCIATION, INC. (the "Plaintiff" or "Association"), by and through their undersigned counsel, hereby files this Motion for Remand and Incorporated Memorandum of Law, and as grounds therefore states as follows:

1. On December 20, 2010, the Association filed its Complaint in an action for breach of warranty against structural defects pursuant to §55-79.79 of the Code of Virginia in the Fourteenth Judicial Circuit in and for Henrico County, Virginia, Case No. CL10-3674, against the Defendant, INVESTORS USA III, LLC (the "Defendant" or "Investors LLC"). On March 30, 2011, Investors LLC was served with the Complaint.

2. On April 18, 2011 Investors LLC filed its Notice of Removal based on diversity of citizenship.

3. For diversity jurisdiction to be available, not only must there be at least \$75,000.00 in controversy at the time the Complaint is removed but the Defendant must

also prove that all adverse parties in the suit are completely diverse in regards to citizenship at the time the suit was filed.

4. The Association asserts, as of the day of filing the Complaint, all parties in this action were not completely diverse.

Investors LLC asserts as the basis for its Notice of Removal that proper subject-matter jurisdiction exists for this Court and this Court has original jurisdiction over the claims set forth in the Complaint pursuant to 28 U.S.C. § 1332 and the following facts:

A. The plaintiff is the executive organ of The Links Condominium Association, Inc., a Virginia Corporation which is a condominium unit owners association located in Henrico County, Virginia.

B. The defendant is a limited liability company organized under the laws of Delaware. The members of Investors USA III, LLC are Garden City Real Estate Group III, LLC and Asset Management Advisors III, LLC.

1) Garden City Real Estate Group III, LLC is organized under the laws of New York and none of its members are citizens of Virginia.

2) Asset Management Advisors III, LLC is organized under the laws of New York. The members of Asset Management Advisors III, LLC are GF Virginia II, LLC, Leonard Bayer, and Ivan Goodstein.

i. GF Virginia II, LLC is organized under the laws of New York and the members of GF Virginia II, LLC are Ivan Goodstein, a citizen of New York, Andrew Goodstein, a citizen of Arizona, and Marjorie Goodstein-Newman, Linda Goodstein and Steven Goodstein, all of whom are citizens of Florida.

ii. Leonard Bayer is an individual and a citizen of New York.

iii. Ivan Goodstein is an individual and a citizen of New York.

Curiously, nowhere in Investors LLC's Notice of Removal, nor in their disclosures, nor in their two discovery responses provided to the Plaintiff in this case do they mention the existence of the Staats Family of Virginia, LLC (the "Staats Family LLC"), the original fourth member of Asset Management Advisors III, LLC ("Asset

Management LLC"). The Staats Family LLC is a Virginia limited liability company and Stephen Staats, a member-manager of the Staats Family LLC, has been an uninterrupted resident of Virginia since 2001.

During the course of discovery in this case it became apparent that as of the date the Association filed the Complaint, the Staats Family LLC held a twenty-four and three-quarter percent (24.75%) interest in Asset Management LLC, and correspondingly, a membership interest in Investors LLC. Moreover, it was discovered that some or all of the members of the Staats Family LLC were citizens of Virginia at the time the Complaint was filed and therefore, according to the well established legal principles described in the incorporated Memorandum of Law, the Staats Family LLC is a citizen of Virginia for the purposes of diversity.

Investors LLC has not proffered any evidence to show that as of the filing date of the Complaint the Staats Family LLC were not members of Asset Management LLC and, correspondingly, Investors LLC. In a removal action the burden to show the complete diversity of all parties involved is on the removing party, the Defendant. For the reasons stated herein and in Plaintiff's incorporated Memorandum of Law, the showing made by the Defendant that the parties in this case are completely diverse is insufficient, and as such, this action should be remanded to the Fourteenth Judicial Circuit in and for Henrico County, Virginia.

5. Plaintiff's Motion for Remand has been filed timely in this case. Federal Statute 28 U.S.C. §1332, provides in pertinent part, "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction of the jurisdiction, the case shall be remanded." Moreover, F.R.C.P 12(h)(3) states, "if the

Court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.”

In this case, no final judgment has yet been entered and Plaintiff's Motion for Remand contends that this Court lacks subject-matter jurisdiction to hear this case. For these reasons and in accordance with the United States Code and the Federal Rules of Civil Procedure, this Motion for Remand has been submitted timely to this Court.

6. The Association has incurred attorneys' fees and costs in conjunction with the filing of this Motion for Remand and in contesting the improper removal of this matter from the Fourteenth Judicial Circuit in and for Henrico County, Virginia. If the Association's Motion for Remand is granted, it respectfully requests this Court enter judgment in favor of the Association and against Investors LLC and award the Plaintiff its “just costs and any actual expenses, including attorney's fees, incurred as a result of the removal.” See 28 U.S.C. §1447(c).

7. For all of the reasons stated herein and for those contained within the incorporated Memorandum of Law, the Association's Complaint should be remanded back to the Fourteenth Judicial Circuit in and for Henrico County, Virginia.

WHEREFORE, the Plaintiffs, the Association, respectfully request this Court to:

1. Remand this case back to the Fourteenth Judicial Circuit in and for Henrico County, Virginia;
2. Award the Association just costs and any actual expenses, including attorneys' fees, incurred by the Association as a result of the improper removal; and
3. Grant any other relief this Court deems just and proper.

BOARD OF DIRECTORS OF THE LINKS  
CONDOMINIUM ASSOCIATION, INC.

By Counsel



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 3, 2011, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to the following: Robert A. Dybing, Esq., William D. Prince, IV, Esq., ThompsonMcMullan, P.C., 100 Shockoe Slip, 3<sup>rd</sup> Floor, Richmond, Virginia 23219, Phone: (804) 698-6248, Fax: (804) 780-1813, rdybing@t-mlaw.com, wprince@t-mlaw.com



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